her consent to the commutation. In 1876, under the advice of counsel, who thought themselves astute, she refused to consent to the commutation, and sued out a writ of *habeas corpus*, but with a very different result from that which she or her counsel anticipated. Judge Bingham, of the Franklin Common Pleas (now Chief Justice of the Supreme Court of the District of Columbia), held that her consent was necessary to commutation, and that the imprisonment in the penitentiary was illegal, but that the result of these conclusions was, not that she should be discharged, but that she should be remanded to the sheriff for execution. From this she and her counsel took a writ of error to the Supreme Court, who held (31 Ohio St. 206) that her acceptance was not necessary to commutation. She was remanded to the penitentiary, and there remained until pardoned last year.

"Another curious question has arisen and been decided in Ohio upon the law of pardons, to wit, that an unconditional pardon is irrevocable although procured by fraud. (*Knapp* v. *Thomas*, 39 Ohio St. 377.)

"Oddly enough, although in this case Governor Foster attempted to revoke the pardon of the prisoner, who was recaptured and again imprisoned until discharged by *habeas corpus* issued in the case cited, the prisoner finally died from the consequences of the fraud itself, which consisted in eating soap to create emaciation, and give the idea that he was a dying man, upon which theory the pardon was granted.

"If you care to follow the subject of Ohio paroles further you will find, perhaps, some additional information in a pamphlet,[1] which I enclose herewith, being a copy of an address on the subject of pardons and commutations delivered by myself at the National Conference of Charities and Corrections, St. Paul, Minnesota, in July, 1886.

"Yours truly,

"GEO. HOADLY."

# THE LAW SCHOOL.

## LECTURE NOTE.

SLANDER. — CONDITIONAL PRIVILEGE. — (*From Mr. Schofield's Lectures.*) — A person making a false statement in good faith is protected when the communication has been made in the discharge of a duty, public or private, legal or moral, or in the conduct of his own business, in matters where his interest is concerned. To accuse a servant of misconduct, though in the presence of third parties,[2] to warn one's servants to avoid a person lately discharged from service,[3] are excusable acts, because done in the conduct of one's affairs; while to give information when requested, or to volunteer it to protect a friend, is only to discharge a social duty.

Where the communication, being made solely in the interest of the person receiving it, has been volunteered, and no confidential relation existed at the time, the courts are inclined to say that, if made in good faith, in the absence of officiousness, the occasion was privileged. (*Adcock* v. *Marsh*, 8 Iredell, 369; Odgers, S. & L., 2d ed., 213.)

[1] The Pardoning Power. By George Hoadly. Reprinted from Proceedings of Thirteenth National Conference of Charities and Corrections, held at St. Paul, Minn., July, 1886.

[2] *Toogood* v. *Spyring*, 1 C., M. & R. 181. [3] *Somerville* v. *Hawkins*, 10 C. B. 583.

But in *Joannes* v. *Bennett*, 5 All. 169, and several other cases, such communications, unless previously solicited, are held not privileged. See *Byam* v. *Collins*, 39 Hun, 204.

It has been decided by a recent case in the Court of Queen's Bench (*Thompson* v. *Dashwood*, 11 Q. B. D. 43) that mailing a letter, *prima facie* privileged, to the wrong person does not take away the privilege. The court put the case on the ground that the animus with which the plaintiff acted determined the question of privilege, and that, if his intention was otherwise justifiable, the privilege could not be taken away by a mere mistake.

The case has, as yet, been but little cited or discussed. It would seem, however, since the privilege exists only between certain persons, that any publication to other persons, by conduct involving negligence, should be held to be a violation of the privilege.

In *King* v. *Patterson*, 49 N. J. Law, 417, it was held that a mercantile agency was justified in making *bona fide* statements, which were false, in regard to the standing of a business firm, only when the publication was sent to those having actual business relations with the person libelled, the case belonging to that class of privileged communications where the communication is made in the interest of the person receiving it. This application of the rule is almost equivalent to saying that every statement in such a publication, which cannot be justified under the plea of the truth, is at the risk of the agency; for but few, if any, of the customers of a commercial agency can have such a direct personal interest in the standing of all persons rated in its publications as this case requires. The contract usually made by the agency with its customers, not to divulge the information given, strictly speaking, affords no protection, for it is a libel to publish such statements, even to a customer who has no interest in them. There was a dissenting opinion in *King* v. *Patterson*, but the case is supported by decisions in other States. See *Sunderlin* v. *Bradstreet*, 46 N. Y. 188.

The question whether a communication is conditionally privileged is a question of law for the court. *Gassett* v. *Gilbert*, 6 Gray, 94, 97. To destroy the privilege the plaintiff must prove "actual malice," which can be done, and is often done, by showing that the defendant exceeded the conditions on which the privilege rests, without other evidence of a malicious purpose. See per Ld. Blackburn, in *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741, at 787. But if the statements are in all other respects within the conditions of the privilege, a malicious or improper motive in making the publication will render the defendant liable. See *Stevens* v. *Sampson*, 5 Ex. D. 53.

## RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ATTORNEY AND CLIENT — AUTHORITY OF ATTORNEY — COMPROMISE. — An attorney, by virtue of his employment, cannot bind his client by a compromise of the demand sued on. *Brockley* v. *Brockley*, 15 Atl. Rep. 646 (Pa.).